



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 6, 2003

Mr. Kyle G. Thomas  
Assistant City Attorney  
City of Amarillo  
P. O. Box 1971  
Amarillo, Texas 79105-1971

OR2003-0800

Dear Mr. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176309.

The City of Amarillo (the "city") received a written request for records pertaining to the investigation of an automobile/bicycle accident. You contend that the requested information is excepted from required disclosure pursuant to section 552.103 of the Government Code.

We note, however, that the release of the requested information is governed by section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a *completed report*, audit, evaluation, or *investigation* made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1) (emphasis added). The information you submitted to this office as being responsive to the request is subject to section 552.022(a)(1). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental

body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.); Open Records Decision No. 542 at 4 (1990) (governmental body may waive section 552.103). Therefore, the city may withhold the submitted records only to the extent they are made confidential under other law for purposes of section 552.101 of the Government Code or are excepted from disclosure under section 552.108 of the Government Code. You do not argue that section 552.108 applies to the requested records. We therefore conclude that the requested information must be released to the requestor in its entirety in accordance with section 552.022(a)(1) of the Government Code, except to the extent the information is made confidential by other law.

In this regard, we first note that among the documents you submitted to this office are medical records that are made confidential under the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001 *et. seq.* Section 159.002 of the Occupations Code provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). We have marked those documents that may be released only in accordance with the MPA. We have also marked additional information that was directly derived from medical records and thus may be released only in accordance with the MPA.

We next note that the submitted records contain an accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (peace officer's accident report). The release of this accident report is governed by chapter 550 of the Transportation Code. Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency

with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the city with two of the three pieces of information. Consequently, the city must release the accident report in accordance with section 550.065 of the Transportation Code.

We also note that the submitted records contain individuals' social security numbers, which are excepted from required public disclosure under section 552.101 of the Government Code<sup>1</sup> in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if the social security numbers were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the city should ensure that these numbers were not obtained or are not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

We additionally note that the submitted records contain a peace officer's cellular telephone number. Under section 552.117(2), the city must withhold, among other things, the home telephone number of a peace officer.<sup>2</sup> Section 552.117 also encompasses a personal cellular telephone number, provided that the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Consequently, assuming the peace officer's cellular telephone service is not paid for by the city, we conclude that this cellular telephone number must be withheld pursuant to section 552.117(2) of the Government Code.

Finally, section 552.130(a)(1) of the Government Code requires the city to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the city must withhold all Texas driver's license numbers pursuant to section 552.130(a)(1) of the Government Code. Also, section 552.130(a)(2) of the Government Code requires the withholding of information

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<sup>1</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

<sup>2</sup>Section 552.117(2) adopts the definition of "peace officer" found in article 2.12 of the Code of Criminal Procedure.

relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the city must withhold all Texas license plate and vehicle identification numbers contained in the records at issue pursuant to section 552.130(a)(2).

In summary, the submitted medical records may be released only in accordance with the MPA. The submitted Peace Officer's Accident Report must be released in accordance with section 550.065 of the Transportation Code. Any social security numbers made confidential by federal law must also be withheld pursuant to section 552.101. The peace officer's cellular telephone number must be withheld pursuant to section 552.117(2) only if the city does not pay for the cellular telephone service, and all Texas drivers' license, license plate, and vehicle identification numbers must be withheld pursuant to section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", with a stylized flourish at the end.

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/RWP/lmt

Ref: ID# 176309

Enc: Submitted documents, disc

c: Mr. Ken Muncy  
301 South Polk Street  
Amarillo Building, Suite 400  
Amarillo, Texas 79101  
(w/o enclosures)